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5 Taro Yamagami Trust,
sued erroneously as Saro Yamagami Trust,

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

11 RICK FUTIA,) Case No. C 08-688 PVT
12 Plaintiff,) ANSWER TO FIRST AMENDED
13 v.) COMPLAINT
14 Taro Yamagami Trust,)
15 sued erroneously as Saro Yamagami Trust,)
16 Defendant.)

17 Defendant Taro Yamagami Trust, sued erroneously as Saro Yamagami Trust answers the
18 Complaint of Rick Futia as follows:

FIRST CLAIM FOR RELIEF

20 1. Defendant lacks sufficient knowledge or information as to the truth of the allegations
21 contained in paragraph 1, and on that basis denies them.

22 2. Defendant admits the allegations of paragraph 2.

23 3. The statutory provisions speak for themselves and must be read in their entirety. Insofar
24 as plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
25 defendant denies the purported allegations of paragraph 3. Defendant also lacks sufficient knowledge
26 or information as to the truth of the remaining allegations contained in paragraph 3, and on that basis
27 denies them.

28 4. Defendant admits the allegations of paragraph 4.

17. Defendant admits the allegations of paragraph 16.

1 5. Defendant admits the allegations regarding venue; however, denies the allegations contained
2 in paragraph 5 relating to discriminatory acts on the part of Defendant.

3 6. Defendant admits the allegations of paragraph 6.

4 7. Defendant admits the allegations of paragraph 7.

5 8. Defendant lacks sufficient knowledge or information as to the truth of the allegations
6 contained in paragraph 8, and on that basis denies them.

7 9. Defendant admits the allegations of paragraph 9.

8 10. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
9 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
10 defendant denies the purported allegations of paragraph 10. Defendant also lacks sufficient
11 knowledge or information as to the truth of the remaining allegations contained in paragraph 10, and
12 on that basis denies them.

13 11. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
14 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
15 defendant denies the purported allegations of paragraph 11.

16 12. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
17 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
18 defendant denies the purported allegations of paragraph 12.

19 13. Defendant lacks sufficient knowledge or information at this time as to the truth of the
20 allegations contained in paragraph 13, and on that basis denies them.

21 14. Defendant lacks sufficient knowledge or information at this time as to the truth of the
22 allegations contained in paragraph 14, and on that basis denies them.

23 15. Defendant lacks sufficient knowledge or information at this time as to the truth of the
24 allegations contained in paragraph 15, and on that basis denies them.

25 16. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
26 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
27 defendant denies the purported allegations of paragraph 16. Defendant also lacks sufficient
28 knowledge or information as to the truth of the remaining allegations contained in paragraph 16, and

1 on that basis denies them.

2 17. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
3 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
4 defendant denies the purported allegations of paragraph 17. Defendant also lacks sufficient
5 knowledge or information as to the truth of the remaining allegations contained in paragraph 17, and
6 on that basis denies them.

7 18. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
8 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
9 defendant denies the purported allegations of paragraph 18.

10 **SECOND CLAIM FOR RELIEF**

11 19. Defendant lacks sufficient knowledge or information as to the truth of these allegations
12 and on that basis denies them.

13 20. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
14 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
15 defendant denies the purported allegations of paragraph 20.

16 21. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
17 as plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
18 defendant denies the purported allegations of paragraph 21.

19 22. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
20 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
21 defendant denies the purported allegations of paragraph 22.

22 23. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
23 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
24 defendant denies the purported allegations of paragraph 23.

25 24. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
26 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
27 defendant denies the purported allegations of paragraph 24. Defendant also lacks sufficient
28 knowledge or information as to the truth of the remaining allegations contained in paragraph 24, and

1 on that basis denies them.

2 25. Defendant lacks sufficient knowledge or information as to the truth of these allegations
3 and on that basis denies them.

4 26. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
5 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
6 defendant denies the purported allegations of paragraph 26. Defendant denies that it has intentionally
7 violated the law. Defendant also lacks sufficient knowledge or information as to the truth of the
8 remaining allegations contained in paragraph 26, and on that basis denies them.

9 27. The statutory provisions speak for themselves and must be read in their entirety. Insofar as
10 plaintiff has inaccurately summarized or interpreted any provision of such code sections, answering
11 Defendant denies the purported allegations of paragraph 27. Defendant also lacks sufficient
12 knowledge or information as to the truth of the remaining allegations contained in paragraph 27, and
13 on that basis denies them. Defendant admits that Plaintiff is seeking relief pursuant to the cited
14 statutes. Defendant Taro Yamagami Trust, sued erroneously as Saro Yamagami Trust, denies that
15 Plaintiff is entitled to any relief against this answering defendant. Except as admitted, Defendant Taro
16 Yamagami Trust, sued erroneously as Saro Yamagami Trust denies each and every remaining
17 allegation in Plaintiff's Complaint directed at this answering Defendant.

FIRST AFFIRMATIVE DEFENSE

19 The Complaint as a whole, and each alleged cause of action therein, fails to state a cause of
20 action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

22 Answering defendant is informed and believes, and on that basis alleges, that Plaintiff failed to
23 mitigate his damages, if any there were, although he had reasonable opportunity to do so.

THIRD AFFIRMATIVE DEFENSE

25 Answering Defendant is informed and believes, and on that basis alleges, that to the extent
26 Plaintiff suffered any injury, said injuries were directly and proximately cased by the acts or omissions,
27 or both, of other persons presently unknown to this answering Defendant.

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FOURTH AFFIRMATIVE DEFENSE

1 The complaint is barred by the applicable statutes of limitation.

FIFTH AFFIRMATIVE DEFENSE

4 Answering defendant is informed and believes, and on that basis alleges, that Plaintiff is barred
5 from recovering by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

7 Plaintiff has failed to pursue his administrative remedies, required before filing this action.

SEVENTH AFFIRMATIVE DEFENSE

9 The Complaint and each Cause of Action therein fail for lack of certainty and conciseness
10 under California and Federal law.

EIGHTH AFFIRMATIVE DEFENSE

12 This Answering Defendant acted in and with a good faith belief in the propriety of all acts
13 performed, or alleged omissions, and is therefore not liable for any claims presented in the Complaint.

NINTH AFFIRMATIVE DEFENSE

15 Should Plaintiff recover from these answering Defendants, such recovery should be reduced to
16 reflect the comparative negligence of Plaintiff and others unrelated to this Answering Defendant
17 pursuant to Civil Code § 1431.2.

TENTH AFFIRMATIVE DEFENSE

19 Plaintiff's claim for injunctive relief has been rendered moot by the conduct and actions
20 of this Answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

22 The making of the modifications of which Plaintiff complains would fundamentally alter the
23 nature of the services, facilities, advantages or accommodations of this Answering Defendant's
24 business facility, and, therefore, the modifications are not legally required

TWELFTH AFFIRMATIVE DEFENSE

26 The making of the modifications of which Plaintiff complains would result in an undue
27 burden and hardship, significant difficulty or expenses to this Answering Defendant, and, therefore, the
28 modifications are not legally required.

1 THIRTEENTH AFFIRMATIVE DEFENSE

2 The barrier removal for which Plaintiff prays is not "readily achievable" within the meaning of
3 42 USC §12181; alternative remedies are also not "readily achievable," and thus not legally required to
4 be performed by this Answering Defendant.

5 FOURTEENTH AFFIRMATIVE DEFENSE

6 There has been no remodeling of, new construction of, or alteration to any area of which
7 Plaintiff complained concerning this Answering Defendant's business premises during the applicability
8 of the Americans With Disability Act, and, therefore, this Answering Defendant has no duty to provide
9 access to Plaintiff imposed by the Americans With Disability Act.

10 FIFTEENTH AFFIRMATIVE DEFENSE

11 The alterations prayed for by Plaintiff would be disproportionate as to costs and scope of said
12 alteration, when comparing the cost of the alteration to the primary function area of this Answering
13 Defendant's premises, and, therefore, such alteration is not legally required.

14 WHEREFORE, defendant prays for relief as follows:

15 1. That plaintiff take nothing by way of his Complaint;
16 2. For attorney's fees and costs of suit; and
17 3. For such other and further relief as the Court may deem proper.
18 4. For a trial by jury

19
20 Dated: June 16, 2008

Law Office of Nancy M. Battel, JD MBA

21
22 /s/

23 By: _____
24 Nancy M. Battel

25 Counsel for Defendant Taro Yamagami Trust,
26 sued erroneously as Saro Yamagami Trust,
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